United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7658

IN THE

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 75-7658

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P/S

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RALPH J. LOMBARDI,

Plaintiff-Appellant,

vs.

CHARLES BOCKHOLDT, NORMAN EBENSTEIN, THE HONORABLE JAMES F. COLLINS, JUDGE OF THE COURT OF COMMON PLEAS, THE HONORABLE CHARLES S. HOUSE, ALVA P. LOISELLE, HERBERT S. MacDONALD, JOSEPH W. BOGDANSKI and JOSEPH S. LONGO, JUSTICES OF THE SUPREME COURT OF THE STATE OF CONNECTICUT,

Defendants-Appellees.

BRIEF OF THE APPELLEE JUDGES

On Appeal From The United States District Court
For The District of Connecticut

For Appellee Judges

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3

I N D E X

TABLE OF CITATIONS

CASES

TABLE OF CITATIONS (Continued)

STATUTES AND RULES

ISSUE

Where a federal civil rights suit for damages and other relief has been filed against members of a state supreme court, a state trial judge and other defendants, alleging that a state civil action had been wrongfully decided, was not the District Court correct in dismissing the complaint on the basis of judicial immunity and other grounds?

STATEMENT OF THE CASE

Nature of the Complaint and the State Court Proceedings

Plaintiff in 1967 brought a pro se action to recover damages for criminal conversation and alienation of affections in the Court of Common Pleas in Hartford County. After a trial on the merits before the Court, judgment was rendered for the defendant. A motion to open the judgment was denied. The plaintiff then filed a pro se appeal to the State Supreme Court which found no error and affirmed. Ralph Lombardi v. Charles Bockholdt, _____Conn._____ A.2d_____, 36 Conn. Law Journal No. 25 at 6 (December 17, 1974).[1]

Over six months later, plaintiff, again pro se, sued the Justices of the State Supreme Court, the trial judge, Judge Collins (since deceased) the state court defendant, Charles Bockholdt, and the latter's attorney, Norman Ebenstein,

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[1] See also Defendant's Exhibit A, containing state court docket entries, lower court decisions and copies of other pertinent judicial proceedings in that case.

in a purported civil rights action in the United States District Court for the District of Connecticut. He claimed in essence that the adverse state court decision constituted a conspiracy to deny his federal civil rights in violation of 42 U.S.C. §1983.

It was alleged, inter alia, that the state court defendant had failed to testify truthfully, that his attorney had "wittingly lied" (Complaint, Doc. No. 1, pp. 1 and 2, ¶ 1, 2a), that Judge Collins had "neglected to use proper reasoning" by failure to determine this (Complaint, Doc. No. 1, p. 3, ¶ 3c), and that both Judge Collins and the State Supreme Court had committed various abuses of discretion in reaching their decisions. He claimed eight million ($8,000,000.00) dollars compensatory damages, eighty million ($80,000,000.00) dollars punitive damages, "such other legal relief as this Court has authority to provide," and other so-called remedies.

Attempted Depositions of the State Judges

A Motion to Dismiss on behalf of the defendant judges was filed on July 21, 1975 (Docket Entry No. 6). While this was pending, plaintiff filed a Notice of Depositions for all defendants including the state judges on August 25, 1975

(received by the undersigned attorneys on August 26, 1975). The deposition date was scheduled for August 30, 1975, the Saturday of Labor Day weekend. The defendant judges then filed an ex parte Application for Temporary Stay of Depositions on August 28, 1975 (Docket Entry No. 25), in order to provide the defendants with time to object at a formal hearing prior to taking the depositions.

The defendant judges cited Rule 26(c) of the Federal Rules of Civil Procedure, providing for protective orders. The stay of the depositions and other discovery was accordingly granted in chambers on August 28, 1975 "until further order of this Court" by the Honorable M. Joseph Blumenfeld, S.J.

At no time did plaintiff file a motion to dissolve this stay. He did, however, voice a protest to the order in a visit to Judge Blumenfeld in chambers upon learning that it had been entered.

Plaintiff's Attempts to Compel Judge Blumenfeld to Recuse Himself

Subsequently, plaintiff filed on September 3, 1975 a document entitled "Declaration of Disqualification" directed against Judge Blumenfeld (Docket Entry No. 31), on the

following grounds: 1) "[i]gnoring plaintiff's motion for an injunction against the defendant judges, 2) granting the stay of depositions ex parte, 3) allegedly stating as to the claim for depositions "[w]e'll argue it out in court" and 4) ordering the plaintiff out of his office.[2] Plaintiff added Judge Blumenfeld's name to the caption of the document as a defendant. He did not, however, at this time file a separate complaint against him or have a summons issued to him pursuant to Rules 3 and 4(a), Federal Rules of Civil Procedure. A document also attacking Judge Blumenfeld entitled "Claim for a Competent Judge" (Docket Entry No. 35) was filed by the plaintiff on September 25, 1975.[3] The "declaration of disqualification" was considered by the Court as a request to recuse and was denied upon a hearing on September 26, 1975. (Tr., p. 3) (Docket Entry No. 39).[4] The "Claim for a Competent Judge" was also denied that date (Tr. pp. 3-4).[5] Three days later (September 29, 1975), plaintiff commenced a separate action to compel Judge Blumenfeld to recuse himself and to obtain other sundry forms of relief. That suit is now pending before the Hon. T. Emmet Claire, C.J. Lombardi v. Blumenfeld, No. H-75-312 (D. Conn.)[6]

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[2]A copy of this document is attached to an earlier brief filed by the plaintiff in the Court of Appeals in Docket No. 75-7576.

3,4,5 & [6]Also attached to the appellant's brief in Docket No. 75-7576, n. 2 supra.

Renewal of Subpoena
Attempts by Plaintiff
and Subsequent Proceedings

On September 19, 1975, plaintiff again subpoenaed the defendant judges, this time to appear at the hearing on the Motion to Dismiss on September 29, 1975. Upon motion, notice and a hearing, the subpoenas were ordered quashed by Judge Blumenfeld on September 26, 1975 (Docket Entry No. 39), the same date he ruled on the requests for disqualification above.[7] The hearing on the Motion to Dismiss went forward on September 29, 1975,[8] and the motion was granted in a ruling filed November 17, 1975.

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[7]Plaintiff had also subpoenaed Judge Blumenfeld and his secretary, Miss Anderson, to appear at the hearing on the Motion to Dismiss on September 29, to be presided over by Judge Blumenfeld. Judge Blumenfeld's subpoena was ordered quashed by Judge Clairie on September 26, 1975, on the basis of judicial immunity. (Docket Entry No. 39)
On behalf of the plaintiff there had also been attempted service of another subpoena on Judge Blumenfeld in open court on September 26, 1975, by Mr. Andrew J. Melechinsky as an "indifferent person". Enforcement was also denied by Judge Clairie the same date on the basis of lack of return.

[8]It is noted that Mr. Melechinsky (note 7, supra) had sought to enter an appearance on September 26, 1975 "as co-counsel" for the plaintiff, signing in the capacity as "Constitutional Attorney Not Establishment Licensed." (Docket Entry No. 38) His request was denied by the Deputy Clerk in Charge on that date on the basis that he was not admitted to practice before the federal court for the district. The appearance was ordered stricken. (Docket Entries Nos. 38 and 39).

Two notices of appeal were filed by the plaintiff. The first, filed October 7, 1975, (Docket Entry No. 40), was directed to the refusals to recuse. A motion by the defendant state judges to dismiss this appeal on the basis that the order was interlocutory and non-appealable was granted by the Court of Appeals on December 9, 1975. (No. 3 D-20, 75-7576) In addition, a motion by defendant-appellee Ebenstein to dismiss the appeal and to treat the appellant's brief and appendix as a petition for a writ of mandamus was also granted, and the petition for a writ of mandamus was denied the same date. (No. 7, D-2, 75-7576).

The second notice of appeal from the ruling on the Motions to Dismiss was filed November 21, 1975, and it is to this appeal that this brief is directed.

ARGUMENT

Fortunately, the applicable legal principles may be set forth more briefly than can the events in the court below. The pertinent issues of judicial immunity, federalism, comity and res adjudicata to which we shall now turn require no extended discussion.

As to judicial immunity,

> "...Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it 'is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.' (Scott v. Stansfield, L.R. 3 Ex. 220, 223(1868), quoted in Bradley v. Fisher, supra, 349, note, at 350.) It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation...."
>
> Pierson v. Ray, 386 U.S. 547 at 553-554 (1967).

Accord, Fanale v. Sheeley, 385 F.2d 866 at 868 (2d. Cir. 1967); see also Scolnick v. Lefkowitz, 329 F.2d 716 (2d Cir. 1964); Mendez v. Heller, 380 F.Supp. 985 at 989 (E.D. N.Y. 1974, three judge district court); cf. also Rivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 456 F.2d 1339 at 1342 (2d Cir. 1972); Garfield v. Palmieri, 297 F.2d 526 at 527 (2d Cir. 1962), cert. den. 369 U.S. 871 (re immunity as applied to federal judges).

In addition, the present suit raises the question of a "back door" contravention of well established principles of federalism and comity. A close reading of the complaint discloses vague references to other relief that is sought, in addition to damages. As stated only recently by the United States Supreme Court:

> "The seriousness of federal judicial interference with state civil functions has long been recognized by this Court. We have consistently required that when federal courts are confronted with requests for such relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence...."
>
> Huffman v. Pursue, _____U.S._____, 95 S.Ct. 1200 at 1208 (March 18, 1975).

These considerations have been held controlling even where a state court judgment has already been rendered, and not merely when the state trial is still underway. See id. at 1210. It is true that in Huffman, the Court noted a failure to exhaust state appellate remedies, and in our case, an appeal was taken. However, the Court has also previously ruled:

> "...It is settled that the prohibition of §2283 cannot be evaded by addressing the order to the parties or prohibiting utilization of the results of a completed state proceeding. Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 9, 60 S.Ct. 215, 218, 84 L.Ed. 537 (1940); Hill v. Martin, 296 U.S. 393, 403, 56 S.Ct. 278, 282, 80 L.Ed. 293 (1935)...."
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> Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, et al, 398 U.S. 281 at 288 (1970).

See also Brown v. Chastain, 416 F.2d 1012 (5th Cir. 1969), cert. den. 397 U.S. 951.

Furthermore, permitting collateral attack on the state court proceedings in this case would appear to be barred by

the usual rules of res judicata and collateral estoppel.[9] See Huffman v. Pursue, supra, 95 S.Ct. at 1209, ns. 18, 19; Cf. England v. Louisiana Board of Medical Examiners, 375 U.S. 411, 419 (1964); Lyddan v. State of Connecticut and Honorable Samuel J. Tedesco (U.S.D.C. D. Conn., Civ. No. B-74-176, unreported ruling on defendants' Motion to Dismiss, June 26, 1974), Zampano, D.J.

Finally, insofar as the present appeal may arguably be construed to renew the issue of refusal of the lower court to recuse itself, it would appear that this question is foreclosed by the previous denial of a writ of mandamus by the Court of Appeals. Aside from this, there was and is no specific allegation of personal interest or prejudice; in essence, only unfavorable rulings are complained of.

> "The case establishes that the bias or prejudice which can be urged against a judge must be based upon something other than rulings in the case."
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> Berger v. United States, 255 U.S. 22 at 31 (1921).

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[9]This defense was specifically set forth by the defendant judges in their memorandum in support of their motion to dismiss.

> "'There is 'as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is,'....'"
>
> Wolfson v. Palmieri, 396 F.2d 121 at 124 (2d Cir. 1968).
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> "It is 'well established that the statute (28 U.S.C. § 144) [Bias or Prejudice of Judge] is to be given the utmost of strict construction in order to safeguard the judiciary from frivolous attacks upon its dignity and integrity.'"
>
> Town of East Haven v. Eastern Airlines, Inc., 304 F.Supp. 1223 at 1225 (D. Conn. 1969) (Timbers, C.J.).

It is also noted that no affidavit was ever filed pursuant to 28 U.S.C. §144. Nor does it appear that "personal bias or prejudice" was demonstrated within the meaning of Pub. L. 93-512, §1, 88 Stat. 1609, amending 28 U.S.C. §455.

CONCLUSION

It is clear that the appeal is not only without merit, but also completely frivolous. Accordingly, it is respectfully submitted that the judgment of the court below should be affirmed.

DEFENDANTS - APPELLES,
The Honorable James F. Collins, Judge of the Court of Common Pleas, The Honorable Charles S. House, Alva P. Loiselle, Herbert S. MacDonald, Joseph W. Bogdanski and Joseph S. Longo, Justices of the Supreme Court of the State of Connecticut

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A D D E N D U M

28 U.S.C. § 144. BIAS OR PREJUDICE OF JUDGE

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

"The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

As amended May 24, 1949, c. 139, § 65, 63 Stat. 99."

28 U.S.C. § 455. DISQUALIFICATION OF JUSTICE, JUDGE, MAGISTRATE, OR REFEREE IN BANKRUPTCY

"(a) Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) 'proceeding' includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) 'fiduciary' includes such relationships as executor, administrator, trustee, and guardian;

(4) 'financial interest' means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a 'financial interest' in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a 'financial interest' in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or

a similar proprietary interest, is a 'financial interest' in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a 'financial interest' in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, magistrate, or referee in bankruptcy shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

As amended Dec. 5, 1974, Pub.L. 93-512, § 1, 88 Stat. 1609."

CERTIFICATION OF SERVICE

I, Daniel R. Schaefer, counsel for the Appellee Judges, hereby certify that on the 13th day of February, 1976, I served two copies of the foregoing brief by mailing the same in duly addressed envelopes, with postage prepaid to: Ralph J. Lombardi, 224 South Elm Street, Windsor Locks, Connecticut 06096; William R. Moller, Esquire and Maurice T. FitzMaurice, Esquire of Regnier, Moller & Taylor, 41 Lewis Street, Hartford, Connecticut 06103 and John P. McKeon, Esquire, 750 Main Street, Hartford, Connecticut 06103.

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